

REMARKS**I. General**

Claims 1-73 are pending in the present application. Claims 28-29, 68, and 70 have been amended by the present amendment. The outstanding issues in the current Office Action dated June 6, 2005 are as follows:

- Claim 28-37, and 68-73 are objected to under 37 C.F.R. § 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.
- Restriction requirement between Invention I, claims 1-27 and 38-63, and Invention II, claims 64-67.

Applicant respectfully requests withdrawal of the objection, and reconsideration and withdrawal of the restriction requirement in light of the amendments and remarks contained herein.

II. Objections under 37 C.F.R. § 1.75(c)

On page 2 of the Office Action, the Examiner objected to claims 28-37, and 68-73 under 37 C.F.R. § 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant has amended the following claims to properly depend from and further limit the subject matter of a previous claim.

Claim 28 has been amended to properly depend from claim 27.

Claim 29 has been amended to properly depend from claim 28.

Claim 68 has been amended to properly depend from claim 64.

Claim 70 has been amended to properly depend from claim 64.

No new matter has been added by these amendments. The amendments redress the Examiner's objections to claims 28-37, and 68-73, and place the claims in condition to be

examined on the merits. Accordingly, Applicant respectfully requests that the objections be withdrawn.

III. Restriction Requirement

In response to the restriction requirement set forth in the Office Action mailed June 1, 2005 (Paper No. 05262005), applicant hereby provisionally elects claims 1-63 (including previously objected to claims 28-37) for continued examination, with traverse. Applicant respectfully requests reconsideration and withdrawal of the restriction requirement in light of the arguments set forth below.

The Examiner has required restriction between invention I and invention II. The Examiner asserts that invention I is embodied in claims 1-63 (including previously objected to claims 28-37), drawn to a system and method for analyzing compatibility of access terminals, classified in class 370, subclass 465. Invention II is embodied in claims 64-73 (including previously objected to claims 68-73), drawn to a method of scheduling access terminals, classified in class 370, subclass 395.4. The Examiner asserts that Inventions I and II are subcombinations disclosed as usable together in a single combination.

Two criteria must be met in order for restriction to be proper. The inventions must be independent or distinct as claimed, and there must be a serious burden on the Examiner. *See* M.P.E.P. § 803. The Examiner's *prima facie* case to establish a serious burden must show one of the following: a separate classification, a separate status in the art when the inventions are classifiable together, or a different field of search. *See* M.P.E.P. § 808.02. Applicant respectfully asserts that the Examiner's *prima facie* case fails to establish a serious burden as required for restriction.

To establish a separate classification each invention's subject matter must have attained recognition in the art as a separate subject matter for inventive effort, and also as a separate field of search. M.P.E.P. § 808.02(A). Although the Examiner asserts that the inventions belong to different subclasses, the Examiner's field of search will necessarily overlap because the claim sets include overlapping subject matter. For example, the field of search for both inventions requires analyzing "array response vector information" associated with access terminals to determine if access terminals are compatible. *See* independent

claims 1, 24, 51, and 64. Moreover, claims 21-23, 48-50, and 61-63 (designated as belonging to invention I), have claim language that is similar to claim language in claims 65-67 (designated as belonging to invention II), requiring the same field of search. Thus, the inventions are classifiable together, at least, because the similar claim language requires the same field of search.

Since the inventions are classifiable together, the Examiner must show a separate status in the art, which may be shown by citing patents that are evidence of such separate status. M.P.E.P. § 808.02(B). The Examiner has not cited any patents showing such separate status. Finally, as discussed above, the similar claim language of in inventions I and II, requires the Examiner to conduct a search in the same fields of search for both inventions. Thus, the inventions do not have a different field of search. Therefore, the Examiner fails to meet the requirements of § 808.02 to establish his *prima facie* case of a serious burden as required for restriction. Accordingly, Applicant respectfully requests that the restriction requirement be withdrawn, and that each of claims 1-73 presently pending in this application be examined.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. 65948/P052US/10400201 from which the undersigned is authorized to draw.

Dated: July 1, 2005

Respectfully submitted,

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